

MICHAEL E. HAGGERTY ET AL.

IBLA 97-191

Decided December 31, 1997

Appeals from a decision of the California State Office, Bureau of Land Management, finding a mining claim and a mill site claim forfeited by operation of law. CAMC 57458 et al.

Affirmed as to the mining claim; reversed as to the mill site claim.

1. Mining Claims: Generally--Mining Claims: Rental or Claim Maintenance Fees

Because payment of maintenance fees was not required for a mill site claim while an appeal from a 1994 Decision declaring the claim null and void was pending before the Interior Board of Land Appeals, a 1996 Decision finding the claim void for failure to make such payment is reversed.

APPEARANCES: Michael E. Haggerty, Fillmore, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Michael E. Haggerty and Rosalinde A. Cross have appealed from a December 18, 1996, Decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented mining claim CAMC 57458 and unpatented mill site claim CAMC 57459 forfeited under provisions of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. §§ 28i through 28k (1994) (Act), and implementing regulations at 43 C.F.R. §§ 3833.1-5 through 3833.1-7. The BLM Decision found that Appellants failed to timely pay a required \$100 claim maintenance fee for each claim listed above for the 1996 and 1997 assessment years or claim exemption from such payments and file annual proofs of labor under 43 U.S.C. § 1744 (1994).

Appellants admit they neither filed certifications of exemption nor paid maintenance fees due on August 31, 1995, and 1996. They explain they had appealed from a 1994 BLM Decision declaring their mill site claim, CAMC 57459, void. While that appeal was pending, Appellants state, they withheld making any fee payments after receiving advice given over the telephone by an unidentified BLM employee that they should "be patient and wait."

Regulations implementing the Act provide that, prior to August 31, for every mining claim in existence between September 1, 1994, and September 1, 1999, a \$100 maintenance fee shall be paid "for the subsequent assessment year" beginning at noon on September 1. See 43 C.F.R. § 3833.1-5(b). This fee may be waived for qualifying small miners. 43 C.F.R. § 3833.1-5(d). To qualify for fee waiver, a written waiver request must be filed "on or before August 31." 43 C.F.R. § 3833.1-7(d); 43 C.F.R. § 3833.1-6(d)(2).

The 1996 BLM Decision found that, under the Act, upon failure to pay claim maintenance fees for the 1996 and 1997 assessment years or file small miner exemption certificates on or before August 31, 1995, and 1996, both claims at issue were forfeited by operation of law. This finding was correct as to the mining claim, CAMC 57458. See 30 U.S.C. § 28i (1994) (providing that a failure to pay the required maintenance fee "conclusively constitutes a forfeiture" and an affected claim is then "deemed null and void by operation of law"). Because this claim became null and void by operation of law at the expiration of the filing deadline without payment or application for waiver of payment of the maintenance fee, corrective action to revive it is not now possible as a matter of law.

[1] The mill site claim, CAMC 57459, however, was not subject to the operation of the statute because the 1994 Decision declaring it void was on appeal to the Board of Land Appeals, and the effect of that Decision was not stayed pending appeal. See Jerry Grover D/B/A Kingston Trust, 141 IBLA 321 (1997). A mining claimant need not pay maintenance fees for a claim declared void while an appeal is pending, if, after the appeal was taken, the Board does not stay the Decision. See Instruction Memorandum No. 98-01, dated Sept. 29, 1997, stating that "[i]f a voidance decision is not stayed, you must not accept any filings or fees submitted by the claimant for the voided claim during the pendency of the appeal to IBLA." It was an error, therefore, for BLM to conclude, as it did in the Decision here under review, that Appellants were required to pay maintenance fees for the mill site claim while the 1994 Decision declaring it void was on appeal before this Board. This finding must be reversed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's finding that CAMC 57458 was forfeited is affirmed, but the finding that CAMC 57459 was forfeited is reversed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Burski
Administrative Judge